

Remarks

Claims 1-7, 10, 13, 15, and 17-28 are currently pending in this application. The Applicant respectfully requests reconsideration of the present application in view of the
5 remarks set forth below.

Claim Rejections – 35 U.S.C. § 102

Claims 1-7, 10, 13, 15, and 17-28 are rejected under 35 U.S.C. §102(a) as being unpatentable over “Group Update and Relaxed Balance in Search Trees” by Satu
10 Virtanen (hereinafter “Virtanen”).

Although the Examiner rejected all pending claims in view of Virtanen, the Examiner has not presented evidence regarding when, how, or, in fact, even whether Virtanen was actually published. Since the Examiner has failed to provide evidence that Virtanen is a “printed publication,” Virtanen does not qualify as prior art under 35 U.S.C.
15 § 102(a). Applicant requests either that the Examiner provide evidence of the date and method that Virtanen was published or withdraw the rejections.

To qualify as prior art under 35 U.S.C. § 102(a), the Examiner must provide evidence that “the invention was ...described in a printed publication ...before the invention thereof.” As a result, to qualify as prior art, the Examiner must provide
20 evidence that Virtanen was published before the invention of the Applicant. The front page of Virtanen, which is a master’s thesis submitted in partial fulfillment of the requirements for a degree of Master of Science in Technology, displays a date of December 4, 2000. Similarly, page iii, which displays an abstract, also displays a date of

December 4, 2000. These dates may indicate the date the document was created and/or the date the document was submitted to Satu Virtanen's supervisor. However, there is no evidence that Virtanen ever published much less the date of publication. Absent evidence of the date that the disclosure was publicly available, if the publication itself does not
5 include a publication date, it cannot be relied upon as prior art under 35 U.S.C. § 102(a) or (b) (see MPEP 2128).

Further, the Examiner has not provided any evidence on how Virtanen qualifies as a "printed publication" within the meaning of 35 U.S.C. 102(a). A reference is a
"printed publication" upon a satisfactory showing that such document has been
10 disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it" (*In re Wyler*, 655 F.2d 221 (CCPA 1981)). Although page iii of Virtanen displays boxes "Not borrowed till:" and "Library code:," there is no evidence that Virtanen was ever borrowed or ever obtained a library code. "[M]erely by depositing the thesis in the
15 university library where it remained uncatalogued and unshelved as of the critical date in question" is not sufficient to transmute a thesis "into a patent-defeating publication" (*In re Bayer*, 658 F. 2d 1357, 196 USPQ 670 at 675, (CCPA 1978)). There is no indication that Virtanen was, at any time, within circulation at a library or within any publicly accessible collection.

Applicant believes that all pending claims are allowable and respectfully requests that the Examiner issue a Notice of Allowance. Should the Examiner have questions, the Applicant's undersigned representative may be reached at the number provided.

Respectfully submitted,

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